

1 **ROUTH CRABTREE OLSEN, P.S.**

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Honorable Judge Timothy W. Dore

Hearing Location: Seattle Courtroom 8106

Hearing Date: June 29, 2012

Hearing Time: 9:30 am

Response Date: June 22, 2012

4 **IN THE UNITED STATES BANKRUPTCY COURT**
5 **WESTERN DISTRICT OF WASHINGTON**

6 **IN RE:**

7 **MAUREEN D NOLAN,**

8
9 Debtor.

CHAPTER 7 BANKRUPTCY

NO.: 12-14199-TWD

**MOTION FOR RELIEF FROM STAY
BY WELLS FARGO BANK, N.A.**

10 **I. Introduction**

11 COMES NOW, Wells Fargo Bank, N.A. its successors in interest, agents, assigns and
12 assignors ("Creditor") and moves this court for an order terminating the automatic stay, allowing
13 Creditor to proceed with and complete any and all contractual and statutory remedies incident to
14 its security interests held in real property commonly described as 68-055 Akule Street, Apt #110,
15 Unit 110, Waialua, HI 96791-9448 ("Property"), and legally described as set forth in the
16 Mortgage attached as an Exhibit to the declaration on file with the court. Creditor further seeks
17 relief in order to, at its option, offer, provide and enter into any potential forbearance agreement,
18 loan modification, refinance agreement or other loan workout/loss mitigation agreement and to
19 contact the Debtor via telephone or written correspondence to offer such an agreement, which
20 shall be non-recourse unless included in a reaffirmation agreement. Creditor further moves that,
21 absent objection, the provisions of F.R.B.P. 4001(a)(3) be waived to avoid further deterioration
22 of Creditor's secured position.
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II. Jurisdiction

This court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code. This proceeding is defined as a “core proceeding” as that is defined in the Code.

III. Standing

Under 11 U.S.C. § 362, a party seeking relief from stay must be a “party in interest.” To establish that Creditor is a “party in interest”, a creditor must establish that it has at least a colorable claim to the property that is the subject of the motion. In the case at bar, Creditor’s claim is based on the Note and Mortgage attached to the Declaration and on file with the court. Creditor’s interest in the Note and Mortgage is described below.

The Mortgage acts as the security for the Borrower’s payment on the Note. The Mortgage is recorded with the county in which the property is situated as evidence of the debt described in the Note for the benefit of any subsequent parties that may take an interest in the property described.

The Note is a negotiable instrument as that term is defined by RCW § 62A.3-104. Under the terms of the Note, Borrower is obligated to pay the instrument according to its terms at the time it was issued. Creditor is entitled to enforce the note under R.C.W. § 62A.3-301.

Under RCW § 62A.3-301(i), the holder of a negotiable instrument is entitled to enforce that instrument. The term “holder” includes the person in possession of a negotiable instrument that is payable to a bearer that is in possession. RCW § 62A.1-201. A note not indorsed to a particular payee is a note “Indorsed in Blank.” A note Indorsed in Blank is payable to the bearer and may be transferred by possession alone. RCW § 62A.3-205. The transfer of a note secured by a deed of trust carries with it the security agreement as incident. See *Spencer v. Alki Point Transportation Company*, 53 Wash. 77, 101 P. 509 (Wash. 1909).

1 In the case at bar, the Note, together with the Declaration accompanying this motion,
2 establish that Creditor is the holder of the Note indorsed in blank and is thus entitled to enforce
3 the Note and foreclose on the Mortgage. Therefore, Creditor has standing to bring this motion.

4 5 **IV. Parties in Interest**

6 On or about October 4, 2006, Maureen Nolan ("Borrower" herein), executed and
7 delivered a note in favor of Wells Fargo Bank, N.A. with an original principal amount of
8 \$210,000.00.

9 The indebtedness under the note is secured by a Mortgage recorded against the Property.

10 Maureen D. Nolan ("Debtor" hereafter) filed for protection under Chapter 7 of Title 11 of
11 the United States Code on April 24, 2012.

12 Upon information and belief, no foreclosure was pending at the time of the bankruptcy
13 filing.

14 15 **V. Default**

16 Debtor is in default pursuant to the terms of the note for failure to make the required
17 payments. Payments are credited as last received to first due. Creditor's loan status reflects
18 payments now owing due on and after December 1, 2010. The following is a breakdown of the
19 default:

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Date of Contractual Payments	Amount	Total
December 1, 2010 to November 1, 2011	\$1,351.14	\$16,213.68
December 1, 2011 to May 1, 2012	\$1,349.73	\$8,098.38
Accrued Late Charges		\$1,143.90
Inspection Fees		\$40.00
Total Default		\$25,495.96

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24 These figures are an estimate only and are subject to change as additional fees are
25 incurred and payments are made or become due, including but not limited to the attorney fees
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1 and costs incurred as a result of the filing of this motion. Please contact Creditor's counsel
2 directly for a reinstatement quote.

3 4 **VI. Estimate of Obligation**

5 The approximate amount owed under the terms of the note is \$243,467.70. The
6 following is an itemization of this approximate amount:

7 Principal Balance	\$220,137.38
8 Accrued Interest	\$22,146.42
9 Accrued Late Charges	\$1,143.90
10 Inspection Fees	\$40.00
11 Total Due	\$243,467.70

12 This total is an approximation of the lien. This estimate is provided only for the purposes
13 of this motion and cannot be relied upon for any other purpose, including tender of payoff. An
14 exact, itemized payoff figure will be obtained from Creditor upon written request to counsel for
15 the Creditor.

16 Debtor's Statement of Intent indicates the Property will be surrendered to Creditor.

17 18 **VII. Value of the Property**

19 Debtor's sworn schedules value the Property at \$200,000.00.

20 21 **VIII. Authority**

22 Under 11 U.S.C. § 362 (d)(1), on request of a party in interest, the Court shall terminate,
23 annul, modify or condition the stay for cause, including the lack of adequate protection.
24 Adequate protection is lacking in cases where there is an insufficient equity cushion in the
25 subject property. In re Mellor, 734 F.2d 1396, 1401 (9th Cir. 1984). An equity cushion is the
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1 amount of value in property that exceeds the amount owed on the property such that a secured
2 creditor will not be subject to a loss in the event of a decrease in value while the property is
3 encumbered by the automatic stay. Id. at 1400 n.2. In determining the amount of value in
4 property, the likely costs of sale or liquidation must be considered. In re Faires, 34 Bankr. 549,
5 550 (Bankr. W.D. Wash. 1983). In the case at bar, considering the value of the Property,
6 Creditor's total lien, and the likely costs of liquidation, there is an insufficient equity cushion and
7 thus Creditor lacks adequate protection.

8 Under 11 U.S.C § 362(d)(2), a Court shall terminate, annul, modify or condition the stay
9 if the debtor has no equity in the Property and the Property is not necessary for an effective
10 reorganization. In the case at bar, the value of encumbrances, including all liens and costs of
11 liquidation, together with available exemptions, exceed the value of the property such that there
12 is no equity available for the estate. Because the Debtor has chosen to liquidate under Chapter 7
13 of the Bankruptcy Code, the granting of an Order on Relief from Stay will not adversely affect
14 the prospects of reorganization.

15 Under 11 U.S.C. § 362(d)(1), cause to terminate the automatic stay exists in Debtor's
16 continued failure to make payments towards the obligation. In this case Debtor has failed to
17 make the required payments as due under the terms of the Note and thus there is cause to lift the
18 stay.

1 **IV. Conclusion**

2 THEREFORE, Creditor requests this Court enter an order terminating the automatic stay
3 pursuant to 11 U.S.C. § 362 and that Creditor be allowed to immediately proceed with and
4 complete any and all contractual and statutory remedies incident to the security interests held in
5 the Property.

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7 DATED this 30 day of May, 2012.

8 **ROUTH CRABTREE OLSEN, P.S.**

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10 By: /s/ Michelle R Riel
11 Michelle R Riel, WSBA# 42090
12 Attorneys for Creditor
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